



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2004

Mr. Lew Blackburn
Executive Director
Wilmer-Hutchins Independent School District
3820 East Illinois Avenue
Dallas, Texas 75216

OR2004-5132

Dear Mr. Blackburn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203931.

The Wilmer-Hutchins Independent School District (the "district") received a request for all police and security personnel written directives, reprimands, affidavits, investigations, and complaints, as well as any disciplinary actions taken against the officers.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.102 and 552.108 of the Government Code.

Section 552.301 provides in relevant part the following:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

¹You have not submitted the request for information to us as required under section 552.301; therefore, we take the description of the request for information from your letter to this office.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

...

(e) A governmental body that requests an attorney general decision under Subsection (a) must within a reasonable time but not later than the 15th business day after the date of receiving the written request:

(1) submit to the attorney general:

(A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;

(B) a copy of the written request for information;

(C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and

(D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]

Gov't Code §552.301(a), (b), (e)(1).

As of the date of this letter, you have not submitted to this office written arguments explaining why the requested information should be excepted, a copy of the request for information, a signed statement as to the date on which you received the request for information, or copies or representative samples of the specific information requested. *See* Gov't Code § 552.301(e)(1). In addition, you have not demonstrated that you submitted this request for an attorney general decision within the ten-day deadline of section 552.301(b). *See* Gov't Code §552.301(e)(1)(C).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to

Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). *But see* Open Records Decision No. 586 at 3 (1991) (need of another governmental body to withhold information under section 552.108 can provide compelling reason under section 552.302). Although you raise section 552.108, you have not demonstrated a compelling reason to withhold the information at issue under section 552.108. *Id.* Accordingly, we find you have waived your claim under section 552.108 in this instance and we determine that none of the information at issue may be withheld under section 552.108. Furthermore, although sections 552.101 and 552.102 of the Government Code are exceptions that can provide compelling reasons for nondisclosure of requested information under section 552.302, we have no basis for concluding that the requested information is excepted under these sections because you failed to submit any portion of the information to us for our review. Therefore, we have no choice but to order you to release the information at issue. If you believe that the information at issue is confidential, private, or proprietary and may not lawfully be released, you must challenge this ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

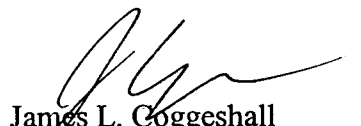
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 203931

c: Ms. Brenda Duff
c/o Wilmer-Hutchins Independent School District
3820 East Illinois Avenue
Dallas, Texas 75216